



## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

Amendment to [check one or more boxes below]

- Add
- Substitute
- Remove
- Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site?  Yes  No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

**Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

The Applicant, SAAKC Buffalo Forge, LLC has entered into a contract with Howden North America, the party currently in the BCP with respect to this Site, to purchase the Site from Howden and ultimately redevelop the Site. Pursuant to that contract SAAKC Buffalo Forge, LLC agreed to file this application to enter the BCP as a co-applicant with Howden. SAAKC Buffalo Forge, LLC will assume all responsibility for implementing BCP requirements but Howden will remain as a co-applicant in the program.

A copy of the contract between Howden and SAAKC Buffalo Forge, LLC is provided with this application.

**\*Please refer to the attached instructions for guidance on filling out this application\***

| Section I. Existing Application Information  |                  |                                     |
|--|------------------|-------------------------------------|
| BCP SITE NAME: Former Buffalo Forge Property   |                  | BCP SITE NUMBER: C915280            |
| NAME OF CURRENT APPLICANT(S): Howden North America Inc.  |                  |                                     |
| INDEX NUMBER OF EXISTING AGREEMENT: C915280-09   |                  | DATE OF EXISTING AGREEMENT: 2013    |
| Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)   |                  |                                     |
| NAME SAAKC Buffalo Forge, LLC  |                  |                                     |
| ADDRESS 150 SE 2nd Ave - Suite 300   |                  |                                     |
| CITY/TOWN Miami Florida  |                  | ZIP CODE 33131                      |
| PHONE 786-802-5981   | FAX NA           | E-MAIL dalexander@saadev.com        |
| Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   |                  |                                     |
| <ul style="list-style-type: none"> <li>If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation &amp; Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.</li> </ul> |                  |                                     |
| NAME OF NEW REQUESTOR'S REPRESENTATIVE   |                  |                                     |
| ADDRESS David Alexander  |                  |                                     |
| CITY/TOWN 150 SE 2nd Ave - Suite 300 Miami Fl  |                  | ZIP CODE 33131                      |
| PHONE 786-802-5981   | FAX NA           | E-MAIL dalexander@saadev.com        |
| NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) Panamerican Environmental/BE3   |                  |                                     |
| ADDRESS 2390 Clinton Street  |                  |                                     |
| CITY/TOWN Buffalo, New York  |                  | ZIP CODE 14227                      |
| PHONE 716-821-1650   | FAX 716-821-1607 | E-MAIL pgorton@panamconsultants.com |
| NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Ms. Deborah Chadsey   |                  |                                     |
| ADDRESS 726 Exchange Street Suite 800  |                  |                                     |
| CITY/TOWN Buffalo  |                  | ZIP CODE 14210                      |
| PHONE 716-845-6000   | FAX 716-845-6474 | E-MAIL dchadsey@kavinokycook.com    |
| Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   |                  |                                     |
| Describe Requestor's Relationship to Existing Applicant:   |                  |                                     |
| Requestor is the Purchaser under a contract of sale of the Site property with the current property owner, Howden North America, Inc. Requestor and Howden expect to close the sale transaction sometime in 2017.   |                  |                                     |

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MAY 15 2017

Bur. Of Tech. Support

**Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)**

OWNER'S NAME (if different from requestor) Howden North America, Inc. C/O Colfax Corp

ADDRESS 420 National Business Parkway, 5th Floor

CITY/TOWN Annapolis Junction, MD

ZIP CODE 20701

PHONE 301-323-9018

FAX 301-323-9001

E-MAIL markpaul.lehman@colfaxcorp.com

OPERATOR'S NAME (if different from requestor or owner) Same

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

**Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)**

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site?  Yes  No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site?  Yes  No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site?  Yes  No  
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment.  Yes  No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information.  Yes  No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants?  Yes  No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state?  Yes  No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department?  Yes  No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application?  Yes  No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order?  Yes  No
11. Are there any unregistered bulk storage tanks on-site which require registration?  Yes  No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

**If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.**

Requestor's Relationship to Property (check one):

Prior Owner  Current Owner  Potential /Future Purchaser  Other \_\_\_\_\_

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached?  Yes  No

**Note: a purchase contract does not suffice as proof of access.**

**Section V. Property description and description of changes/additions/reductions (if applicable)**

ADDRESS NA

CITY/TOWN

ZIP CODE

TAX BLOCK AND LOT (TBL) (in existing agreement )

| Parcel Address | Parcel No. | Section No. | Block No. | Lot No. | Acreage |
|----------------|------------|-------------|-----------|---------|---------|
|                |            |             |           |         |         |
|                |            |             |           |         |         |
|                |            |             |           |         |         |

Check appropriate boxes below:  NA

Changes to metes and bounds description or TBL correction

Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: \_\_\_\_\_

ADDITIONAL PARCELS:

| Parcel Address | Parcel No. | Section No. | Block No. | Lot No. | Acreage |
|----------------|------------|-------------|-----------|---------|---------|
|                |            |             |           |         |         |
|                |            |             |           |         |         |
|                |            |             |           |         |         |

Reduction of property

Approximate acreage removed: \_\_\_\_\_

PARCELS REMOVED:

| Parcel Address | Parcel No. | Section No. | Block No. | Lot No. | Acreage |
|----------------|------------|-------------|-----------|---------|---------|
|                |            |             |           |         |         |
|                |            |             |           |         |         |
|                |            |             |           |         |         |

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

**Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.**

NA

|   |  |
|---|--|
| Property is in Bronx, Kings, New York, Queens, or Richmond counties.  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>Please answer questions below and provide documentation necessary to support answers.</b>  |  |
| 1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Is the property upside down as defined below?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>From ECL 27-1405(31):</b>  |  |
| "Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.  |  |
| 3. Is the project an affordable housing project as defined below?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| From 6 NYCRR 375- 3.2(a) as of August 12, 2016:   |  |
| (a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.  |  |
| (1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income. |  |
| (2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.   |  |
| (3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.  |  |

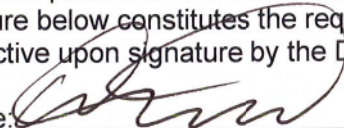
PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

| Existing Agreement Information                           |                          |
|--|--------------------------|
| BCP SITE NAME: Former Buffalo Forge Property             | BCP SITE NUMBER: C915280 |
| NAME OF CURRENT APPLICANT(S): Howden North America, Inc. |                          |
| INDEX NUMBER OF EXISTING AGREEMENT: C915280-09-13        |                          |
| EFFECTIVE DATE OF EXISTING AGREEMENT: October 30, 2013   |                          |

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

| Statement of Certification and Signatures: New Requestor(s) (if applicable)   |
|---|
| (Individual)<br><br>I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.<br><br>Date: _____ Signature: _____<br><br>Print Name: _____  |
| (Entity)<br><br>I hereby affirm that I am (title <u>Authorized Signatory</u> ) of (entity <u>SAAKC BUFFALO FORGE LLC</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.<br><u>David Alexander</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.<br><br>Date: <u>2-23-2017</u> Signature: <br><br>Print Name: <u>David Alexander</u> |

**Statement of Certification and Signatures. Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am VP and Assistant Secretary (title) of Howden North America, Inc. (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. \_\_\_\_\_ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: April 7, 2017 Signature: \_\_\_\_\_

Print Name: Mark Paul Lehman

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

|   |   |
|---|---|
| <input type="checkbox"/> <b>PARTICIPANT</b><br>A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination. | <input type="checkbox"/> <b>VOLUNTEER</b><br>A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination. |
|---|---|

Effective Date of the Original Agreement:

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

\_\_\_\_\_  
Robert W. Schick, P.E., Director  
Division of Environmental Remediation



**SUBMITTAL INFORMATION:**

- **Two (2) copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:**

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

---

**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:** \_\_\_\_\_ **LEAD OFFICE:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_

# Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "SAAKC BUFFALO FORGE, LLC", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF DECEMBER, A.D. 2015, AT 12:09 O`CLOCK P.M.



  
Jeffrey W. Bullock, Secretary of State

5907283 8100  
SR# 20151336025

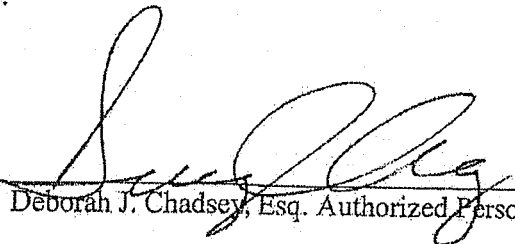
Authentication: 10610876  
Date: 12-14-15

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

STATE OF DELAWARE  
LIMITED LIABILITY COMPANY  
CERTIFICATE OF FORMATION  
OF  
SAAKC BUFFALO FORGE, LLC

- FIRST: The name of the limited liability company is SAAKC Buffalo Forge, LLC.
- SECOND: The address of its registered office in the State of Delaware is 874 Walker Road, Suite C, in the City of Dover, Delaware 19904. The name of the Registered agent at such address is United Corporate Services, Inc.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation this 14th day of December, 2015.

  
Deborah J. Chadsey, Esq. Authorized Person

CERTIFICATE OF AUTHORITY UNDER SEC. 805 OF THE LIMITED LIABILITY COMPANY LAW

ENTITY NAME: SAAKC BUFFALO FORGE, LLC

DOCUMENT TYPE: APPLICATION FOR AUTHORITY (FOR LLC)

COUNTY: ERIE

FILED:04/26/2017 DURATION:\*\*\*\*\* CASH#:170426000230 FILM #:170426000219  
DOS ID:5126056

FILER:

EXIST DATE

DEBORAH J. CHADSEY, ESQ.  
KAVINOKY COOK LLP  
726 EXCHANGE STREET, SUITE 800  
BUFFALO, NY 14210

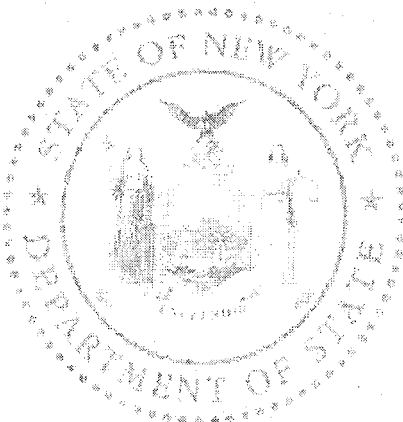
04/26/2017

ADDRESS FOR PROCESS:

THE LLC  
ATTN: DAVID S. ALEXANDER  
MIAMI, FL 33131

150 SE 2ND AVE + SUITE 300

REGISTERED AGENT:



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

SERVICE COMPANY: UNITED CORPORATE SERVICES - 37

SERVICE CODE: 37

|          |        |
|----------|--------|
| FEES     | 285.00 |
| -----    |        |
| FILING   | 250.00 |
| TAX      | 0.00   |
| CERT     | 0.00   |
| COPIES   | 10.00  |
| HANDLING | 25.00  |

|          |        |
|----------|--------|
| PAYMENTS | 285.00 |
| -----    |        |
| CASH     | 0.00   |
| CHECK    | 0.00   |
| CHARGE   | 0.00   |
| DRAWDOWN | 285.00 |
| OPAL     | 0.00   |
| REFUND   | 0.00   |

SAAKC34149

DOS-1025 (04/2007)

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on April 27, 2017.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

170426000219

New York State  
Department of State  
Division of Corporations, State Records  
and Uniform Commercial Code  
One Commerce Plaza, 99 Washington Ave.  
Albany, NY 12231  
www.dos.ny.gov

APPLICATION FOR AUTHORITY  
OF

SAAKC Buffalo Forge, LLC

*(Insert name of Foreign Limited Liability Company)*

Under Section 802 of the Limited Liability Company Law

FIRST: The name of the limited liability company is:

SAAKC Buffalo Forge, LLC

If the name does not contain a required word or abbreviation pursuant to Section 204 of the Limited Liability Company Law, the following word or abbreviation is added to the name for use in this state:

(Do not complete this section unless the limited liability company's true name is not available pursuant to §204 of the Limited Liability Company Law.) The fictitious name under which the limited liability company will do business in New York is:

SECOND: The jurisdiction of organization of the limited liability company is: Delaware

The date of its organization is: December 14, 2015

THIRD: The county within this state in which the office, or if more than one office, the principal office of the limited liability company is to be located is: Erie

(A county in New York State must be stated. Please note that the limited liability company is not required to have an actual physical office in this state.)

FOURTH: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process served against him or her is:

SAAKC Buffalo Forge, LLC, 150 SE 2nd Ave + Suite 300, Miami, Florida, 33131  
Attn: David S. Alexander

FIFTH: (Check and complete the statement that applies)

The address of the office required to be maintained in the jurisdiction of its formation is:

United Corporate Services, Inc.

874 Walker Road

Dover, Delaware 19904

If no office is required to be maintained in the jurisdiction of its formation, the address of the principal office of the limited liability company is:

SIXTH: The foreign limited liability company is in existence in its jurisdiction of formation at the time of filing of this application.

SEVENTH: The name of the authorized officer in its jurisdiction of its formation where a copy of its articles of organization is filed is (e.g. "Secretary of State"):

Secretary of State of Delaware

The address for such officer is:

Division of Corporations, PO Box 898, Dover, Delaware 19904

X

  
(Signature)

David S. Alexander

(Type or print name)

Manager

(Title or capacity of signer)

Please Note: A certificate of existence or, if no such certificate is issued by the jurisdiction of formation, a certified copy of the articles of organization of the limited liability company and all subsequent amendments therefore, or if no articles of organization have been filed, a certified copy of the certificate filed as its organizational base and all amendments thereto, must be attached to the application for authority when submitted for filing. If such certificate or certified copy is in a foreign language, a translation in English thereto under oath of the translator shall be attached.

# Delaware

The First State

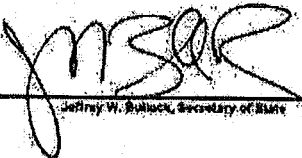
Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "SAAKC BUFFALO FORGE, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-FIFTH DAY OF APRIL, A.D. 2017.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "SAAKC BUFFALO FORGE, LLC" WAS FORMED ON THE FOURTEENTH DAY OF DECEMBER, A.D. 2015.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



  
Jeffrey W. Bullock, Secretary of State

5907283 8300

SR# 20172777302

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 202430140

Date: 04-25-17



219

UNI-37

APPLICATION FOR AUTHORITY  
OF

SAACK BUFFALO FORGE, LLC

*(Insert name of Foreign Limited Liability Company)*

Under Section 802 of the Limited Liability Company Law

FILED

2017 APR 26 AM 11:15

Filed by: Deborah J. Chadsey, Esq./Kavinoky Cook LLP

*(Name)*

726 Exchange Street, Suite 800

*(Mailing address)*

Buffalo, NY 14210

*(City, State and Zip code)*

NOTE: This form was prepared by the New York State Department of State for filing an application for authority for a foreign limited liability company to conduct business in New York State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal supply stores. The Department of State recommends that legal documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$250 filing fee made payable to the Department of State.

FILED

2017 APR 26 AM 11:15

*(For office use only)*

CUST REF# SAACK34149

DRAWDOWN

RECEIVED

2017 APR 25 PM 3:07

100  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 26 2017

TAX \$  
LW

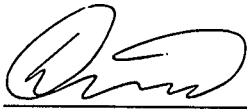
230

**ACTION BY WRITTEN CONSENT**  
**SAAKC BUFFALO FORGE, LLC**  
**IN LIEU OF A SPECIAL MEETING**  
(New York State Brownfield Cleanup Agreement)

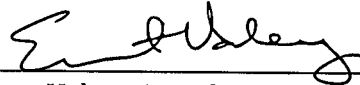
The undersigned, representing the majority of membership interests in **SAAKC Buffalo Forge, LLC** (the "Company"), hereby adopt, by written consent, the resolutions set forth on Exhibit A attached hereto and made a part hereof, which resolutions shall have the same force and effect as if adopted at a duly called meeting of the members of the Company held on the effective date hereof.

This Written Consent may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one Written Consent. Further, this Written Consent may be executed by the undersigned members by facsimile, email or other comparable copy method and said facsimiles, emails and/or copies shall be acceptable and relied upon as if said facsimiles, emails and/or copies contained original signatures.

IN WITNESS WHEREOF, the undersigned have executed this Action by Written Consent effective the 1<sup>st</sup> day of April 2017.



\_\_\_\_\_  
David Alexander, Member



\_\_\_\_\_  
Ernst Valery, Member

**EXHIBIT A**

**RESOLUTIONS  
(New York State Brownfield Cleanup Agreement)**

WHEREAS, **SAAKC Buffalo Forge, LLC** (the "Company") desires to enter into a Brownfield Cleanup Agreement with the New York State Department of Environmental Conservation for the redevelopment of property referred to as the Former Buffalo Forge Site; and

WHEREAS, it is advisable and in the best interests of the Company to redevelop such property under the New York State Brownfield Program, to obtain certain tax credits and other incentives.

NOW THEREFORE, be it:

RESOLVED, that the Company be authorized and empowered:

To enter into the Brownfield Cleanup Agreement with the New York State Department of Environmental Conservation ("NYSDEC") for the project referred to as Former Buffalo Forge Site;

To make, execute, seal, acknowledge and deliver, in the name of the Company, agreements, guaranties, and all other instruments, documents and agreements required by NYSDEC (collectively, the "Brownfield Documents") in connection with, or to give effect to, the foregoing resolutions or any of the powers and authority therein granted and to continue, extend, modify or amend the same from time to time, on such terms and conditions as any of the said members(s), including but not limited to David Alexander, shall, by his, her or their execution and delivery thereof, deem satisfactory.

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**CONTRACT OF SALE**

THIS CONTRACT, made as of the \_\_\_ day of March, 2017, by and among **HOWDEN NORTH AMERICA INC.**, a Delaware corporation, with an office at 420 National Business Parkway, Annapolis Junction, Maryland (“Seller”), **SAAKC BUFFALO FORGE, LLC**, a Delaware limited liability company, with an office at 777 Brickell Avenue, 5th Floor, Miami, Florida (“Purchaser”).

1. **Agreement.** Seller shall sell and Purchaser shall buy, in accordance with the terms of this Contract, unimproved vacant real property as follows:

(a) Purchaser shall purchase property consisting of parcels known as 498 Broadway Street, 233 Mortimer Street, 213 Mortimer Street, 187 Mortimer Street, 516 Spring Street, 498 Spring Street and 490 Broadway Street, Buffalo, New York. The aforementioned real property is identified in the real property tax records as S.B.L. Nos. 111.41-5-31.1, 111.41-8-26, 111.41-4-1.1, 111.41-5-1.1, 111.41-7-12.1, 111.41-7-17.1 and 111.41-6-1.1 (the “Property”).

2. **Purchase Price.**

(a) The purchase price for the Property (“Purchase Price”) is [REDACTED] (U.S.). Purchaser has delivered to Seller [REDACTED] (U.S.) earnest money deposit (“Initial Deposit”). Within five (5) days of the Effective Date (as hereinafter defined) of this Contract, Purchaser shall deliver to Seller an additional [REDACTED] (U.S.) earnest money deposit, which shall consist of [REDACTED] (U.S.) which is non-refundable (“Non-refundable Deposit”) and [REDACTED] (U.S.) which is refundable in certain instances set forth in this Contract (“Refundable Deposit”) (collectively, the “Second Deposit”). The Initial Deposit and the Second Deposit shall together be referred to as the “Deposit”. The Deposit shall be applied by Seller to the Purchase

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Price at Closing. The balance of the Purchase Price is payable at Closing by wire transfer (subject to the adjustments required by Section 4 hereof).

(b) Seller shall receive from Purchaser an amount equal to Seller's Tax Credits, as hereinafter defined, no later than October 15, 2017 ("Seller's Prepaid Tax Credit"). Seller shall submit all such back-up documentation and accounting as would be required to be submitted to the New York State Department of Taxation and Finance ("NYSDTF") if Seller were directly applying to NYSDTF for Seller's Tax Credits no later than June 31, 2017. Purchaser shall be entitled to review and assess the collectability of such credits under the New York State Brownfield Tax Credit Program for ninety (90) days after receipt of Seller's submitted documentation and shall notify Seller in writing no later than September 1, 2017, if Purchaser determines any expense or expenditure would not be eligible for inclusion under Section 21 of New York State Tax Law. Seller and Purchaser shall thereafter confer and reach agreement on the amount of the Seller Tax Credits to which Seller is entitled which amount shall be Seller's Prepaid Tax Credit. Upon payment by Purchaser to Seller of Seller's Prepaid Tax Credit, Seller shall no longer be entitled to any Tax Credits, as hereinafter defined, remitted by the NYSDTF upon Purchaser's completion of the Remedial Work, as hereinafter defined, and Purchaser shall be entitled to claim those amounts expended by Seller in Purchaser's claim for Purchaser's Tax Credits, as hereinafter defined. Seller shall cooperate with Purchaser, as reasonably required, to effectuate the terms of this Section 2(b). Notwithstanding anything in this Section 2(b), (i) Seller shall still be listed on the Certificate of Completion, as hereinafter defined, (ii) Purchaser shall still complete the Remedial Work and obtain the Certificate of Completion pursuant to the timeframe set forth in this Contract and (iii) Purchaser shall have no right of recovery or claim against Seller in the event the amount actually received by Purchaser

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from NYSDTF resulting from Seller's expenditures is less than Seller's Prepaid Tax Credits.

This Section shall survive Closing, as hereinafter defined.

3. **Default/Remedies.** Except as described herein, in the event of any breach of this Contract by Purchaser, the parties agree that Seller's damages will be difficult to ascertain. Accordingly, Seller and Purchaser agree that any damages Seller may recover from Purchaser shall be limited to the Deposit, which, except as provided in this Section 3, and Sections 16 and 18 of this Contract, the parties agree shall constitute Seller's sole and exclusive remedy and Seller's liquidated damages; provided, however, that such liquidated damages shall not limit Seller's right to recover from Purchaser any costs or expenses with regard to any indemnification and/or repair obligations of Purchaser in this Contract. To the extent that any breach of this Contract by Purchaser occurs after the Closing, Seller shall be entitled to specific performance of the agreements and obligations of Purchaser hereunder and to such other injunctive or other equitable relief as may be granted by a court of competent jurisdiction. In the event of any breach of this Contract by Seller, Purchaser may terminate this Contract and receive a refund of the Initial Deposit and the Refundable Deposit as Purchaser's sole and exclusive remedy. Purchaser shall have only the remedies set forth in this Contract. This Section shall survive Closing and delivery of the Deed.

4. **Adjustments.** All non-delinquent sewer charges, real estate taxes and assessments shall be adjusted and prorated on a fiscal year basis as of the Closing Date (as hereinafter defined).

5. **Title Commitment and Survey.** Purchaser may: (a) order a survey of the Property ("Survey") and (b) secure a commitment for owner's title insurance covering the Property prepared by a title insurer licensed to do business in the State of New York ("Title

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Commitment”). In the event that Purchaser elects to obtain a Survey and/or Title Commitment, Purchaser shall provide Seller with a print of the Survey and a complete copy of the Title Commitment (with copies of all exception documents) respectively, within five (5) business days upon receipt of each.

### **6. Deed and Related Documents.**

(a) At Closing, Seller shall deliver to Purchaser (i) a bargain and sale deed containing all Deed Restrictions (as hereinafter defined) conveying fee title to the Property, attached hereto as Exhibit B, together with a TP-584 transfer tax form (two copies) and a RP-5217 transfer report (collectively, “Deed”) (ii) a Foreign Investment in Real Property Tax Act (“FIRPTA”) certificate, (iii) proof of payment of all real property taxes, occupancy taxes, garbage user fees, assessments, sewer charges and water bills (and all customary guaranties thereof) then due and payable, and (iv) a signed and receipted closing statement.

(b) Within ten (10) days of the Effective Date of this Contract, and in no event later than Purchaser’s entrance onto the Property, Purchaser shall deliver to Seller the Certificate of Insurance (as hereinafter defined).

(c) At Closing, Purchaser shall deliver to Seller (i) a countersigned Deed, (ii) the Guaranty (as hereinafter defined), and (iii) a signed and receipted closing statement.

7. **Possession.** Purchaser shall take possession of the Property on the Closing Date.

### **8. Closing Costs.**

(a) Seller shall pay (i) Seller’s attorneys’ fees; (ii) any and all deed stamps, documentary stamps, grantor’s tax and transfer tax (New York State and Erie County);

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(iii) all recording and filing fees necessary to clear title to the Property, and (iv) such other costs delineated herein as being the responsibility of Seller.

(b) Purchaser shall pay (i) the recording fees for the Deed and the filing fees for the RP-5217 transfer report form; (ii) the cost of filing the TP-584 transfer tax form, (iii) the cost of the Title Commitment (including the title insurance premium and charges for endorsements requested by Purchaser in connection with Purchaser's policy of owner's title insurance, if Purchaser determines to purchase such title insurance policy); (iv) the cost of the Survey; (v) Purchaser's attorneys' fees; and (vi) such other costs delineated herein as being the responsibility of Purchaser.

9. **Objection to Title.** Purchaser may object to any bona fide title defects set forth in the Title Commitment or Survey ("Disapproved Encumbrances") by providing written notice to Seller no later than forty-five (45) days after the Effective Date. Within ten (10) business days after Seller's receipt of Purchaser's written notice of the Disapproved Encumbrances, Seller shall provide Purchaser with written notice ("Seller's Notice") indicating which Disapproved Encumbrances Seller intends to cure. Notwithstanding the foregoing, Purchaser shall have no right to object to (i) zoning ordinances and all other applicable laws, statutes, codes, ordinances and regulations, (ii) rights of the public and adjoining owners in any highways, streets and roads abutting the Property, (iii) municipal and utility easements and rights-of-way, (iv) deminimus encroachments, if any, (v) deminimus variations, if any, between the record lot lines of the Property and those shown on any survey of the Property, (vi) real property taxes and assessments which are not yet due and payable, or (vii) any state of facts that would be disclosed by an inspection and/or survey of the Property (collectively "Permitted Encumbrances"). If Seller elects not to cure any one (1) or more of the Disapproved



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Encumbrances, then Purchaser will have as its sole remedy the right to terminate this Contract on written notice to Seller within five (5) business days after Purchaser's receipt of Seller's Notice, in which event the Initial Deposit and the Refundable Deposit will be refunded to Purchaser. If Seller does not receive Purchaser's written termination notice within such five (5) business day period, this Contract will remain in full force and effect. Notwithstanding anything to the contrary herein, Seller may, but shall not be obligated to, cure, satisfy or remove of record any title defects, title objections, Disapproved Encumbrances or any other instrument or matter of public record or otherwise.

10. **Purchaser's Acceptance into BCP as a Closing Condition.**

(a) As more fully addressed in Section 18 below, Purchaser's acceptance into the New York State Department of Environmental Conservation ("NYSDEC") Brownfield Cleanup Program ("BCP") as a Volunteer (as hereinafter defined) shall be a condition precedent to Closing. Purchaser shall submit to NYSDEC no later than five (5) business days following the Effective Date, a bona fide application to amend the NYSDEC Brownfield Cleanup Agreement as defined in 6 NYCRR 375-3.2(c) (and including all related work plans, the "BCA") to enter the BCP. Purchaser shall execute the BCA no later than ten (10) business days after Purchaser receives written confirmation from NYSDEC of NYSDEC's acceptance of Purchaser as a Volunteer under the BCP, with regard to the Property. If Purchaser fails to execute and deliver the BCA to NYSDEC within such ten (10) business day Period, Purchaser shall be in default of this Contract. If Purchaser is not accepted into the BCP as a Volunteer, this Contract shall be deemed terminated, null and void in all respects (except for obligations which expressly survive termination), and Seller shall promptly return the Initial Deposit, together with the Refundable Deposit, to Purchaser.

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11. **Closing Date.** This Contract shall be closed at the office of Seller's attorneys on the later of (a) five (5) business days following Purchaser's execution of the BCA upon NYSDEC acceptance of Purchaser in the BCP as a Volunteer, (b) five (5) days following the NYSDEC's approval of the Draft AAR or (c) ten (10) days following Purchaser's receipt of Seller's Notice (collectively, "Closing" or "Closing Date"). However, if the Closing has not occurred by June 1, 2017, Purchaser shall have five (5) business days to deliver written notice to Seller of Purchaser's intent to extend the Contract by up to forty-five (45) days ("Extension Period") (collectively, "Extension Notice"). Should Purchaser fail to deliver the Extension Notice, or should the Closing not occur by the expiration of the Extension Period, Seller may terminate this Contract, in its sole and absolute discretion, in which case the Initial Deposit, together with the Refundable Deposit, shall promptly be returned to Purchaser.

12. **Brokerage.** Pyramid Brokerage Company acted as real estate broker in procuring this Contract (the "Broker"). The Broker is the sole real estate broker involved in the transaction contemplated by this Contract. Seller and Purchaser represent and agreed to and with each other that they respectively have had no dealings, negotiations or consultations with any other broker in connection with this Contract and the sale of the Property. Seller and Purchaser shall each indemnify and hold the other free and harmless from all losses, damages, costs and expenses (including attorneys fees) that either may suffer as a result of any claim or suit brought by any other broker or finder who claims that he participated with Seller or Purchaser, as the case may be. This Section shall survive Closing and delivery of the Deed.

13. **Disclosure.** To the extent within Seller's possession or control, Seller shall, within five (5) business days after the Effective Date, furnish Purchaser with all existing material submittals made by Seller to NYSDEC in Seller's application into the BCP.

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### 14. **Warranties, Representations and Covenants.**

(a) Seller represents, warrants and covenants to Purchaser as follows:

(i) Seller has the power, capacity and authority to make and perform its obligations under this Contract.

(ii) Seller has disclosed to Purchaser any and all environmental reports regarding the Property in Seller's possession, custody, or control.

(b) Purchaser represents, warrants and covenants to Seller as follows:

(i) Purchaser has the power, capacity and authority to make and perform its obligations under this Contract.

(c) Guarantors (as hereinafter defined) represent, warrant and covenant to Seller as follows:

(i) Each Guarantor has the power, capacity and authority to make and perform its obligations under this Contract and the Guaranty.

### 15. **Disclaimer of Warranties/As Is/ Release and Indemnification.**

PURCHASER SHALL ACQUIRE THE PROPERTY ON AN "AS IS, WHERE IS" BASIS, WITH ALL FAULTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT, SELLER MAKES NO WARRANTY, GUARANTY, COVENANT, AGREEMENT OR REPRESENTATION OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED. SELLER SHALL HAVE ABSOLUTELY NO OBLIGATION TO REPAIR, RESTORE, INVESTIGATE, CLEAN UP OR REMEDIATE ALL OR ANY PART OF THE PROPERTY OR ANY IMPROVEMENT. SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO WHETHER THE PROPERTY COMPLIES WITH FEDERAL, STATE, COUNTY OR LOCAL LAWS,

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STATUTES, CODES, ORDINANCES, GUIDELINES, ORDERS, DECREES, RULES AND/OR REGULATIONS, INCLUDING ENVIRONMENTAL LAWS (AS DEFINED BELOW) (COLLECTIVELY "LAWS"). WITHOUT LIMITING THE FOREGOING, SELLER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO: (A) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE SOIL OR GEOLOGY OF THE PROPERTY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS; (D) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (E) THE ACCURACY OR COMPLETENESS OF ANY MATERIALS, DOCUMENTS OR INFORMATION PROVIDED TO PURCHASER UNDER THE PROVISIONS OF THIS CONTRACT OR OTHERWISE; (F) THE ENFORCEABILITY OR EFFECT OF ANY LEGAL, CONTRACTUAL OR OTHER RIGHTS OR OBLIGATIONS PERTAINING TO THE PROPERTY OR ANY VARIANCES, CERTIFICATES, PERMITS, LICENSES OR APPROVALS, INCLUDING ANY ENTITLEMENTS OR SIMILAR DEVELOPMENT RIGHTS OF ANY TYPE WHATSOEVER; OR (G) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. SELLER DOES NOT MAKE AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIAL, HAZARDOUS WASTE, HAZARDOUS SUBSTANCE, TOXIC MATERIAL, TOXIC SUBSTANCE, POLLUTANT, FLAMMABLE MATERIAL, RADIOACTIVE MATERIAL, EXPLOSIVE MATERIAL, POLYCHLORINATED BIPHENYLS, UREA FORMALDEHYDE INSULATION, LEAD PAINT, METHANE, ASBESTOS, RADON,

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MOLD, GASOLINE, PETROLEUM, PETROLEUM PRODUCT OR PETROLEUM CONSTITUENT OR ANY OTHER CONSTITUENT REGULATED OR ADDRESSED BY ANY LAW OR ENVIRONMENTAL LAW (COLLECTIVELY “HAZARDOUS MATERIALS”) IN, ON, UNDER OR ABOUT THE PROPERTY OR THE COMPLIANCE OR NON-COMPLIANCE OF THE PROPERTY WITH ANY AND ALL FEDERAL, STATE, COUNTY OR LOCAL ENVIRONMENTAL LAWS (AS HEREIN DEFINED). PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS IN EXISTENCE OR BEING RELIED ON BY PURCHASER.

(a) “ENVIRONMENTAL LAWS” SHALL MEAN ALL FEDERAL, STATE, COUNTY AND LOCAL ENVIRONMENTAL, AND USE, ZONING, HEALTH, CHEMICAL USE, SAFETY AND SANITATION LAWS, STATUTES, ORDINANCES AND CODES RELATING TO THE PROTECTION, PRESERVATION OR REMEDIATION OF THE ENVIRONMENT AND/OR GOVERNING THE USE, STORAGE, TREATMENT, GENERATION, TRANSPORTATION, PROCESSING, HANDLING, PRODUCTION OR DISPOSAL OF HAZARDOUS MATERIALS AND THE RULES, REGULATIONS, WRITTEN AND PUBLISHED POLICIES, GUIDELINES, DECISIONS, ORDERS AND DIRECTIVES OF FEDERAL, STATE AND LOCAL GOVERNMENTAL AGENCIES AND AUTHORITIES WITH RESPECT THERETO, WHETHER CURRENTLY EXISTING OR SUBSEQUENTLY ENACTED, INCLUDING BUT NOT LIMITED TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED (42 U.S.C. SECTIONS 9601 ET SEQ.), THE HAZARDOUS SUBSTANCES TRANSPORTATION ACT, AS AMENDED (49 U.S.C. SECTION 1801, ET SEQ.), THE SOLID WASTE DISPOSAL ACT AS AMENDED BY THE RESOURCE

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CONSERVATION AND RECOVERY ACT (42 U.S.C. SECTIONS 6901, ET SEQ.) THE TOXIC SUBSTANCES CONTROL ACT, AS AMENDED (15 U.S.C. SECTIONS 2601, ET SEQ.), THE FEDERAL WATERS POLLUTION CONTROL ACT, AS AMENDED (33 U.S.C. SECTIONS 1251 ET SEQ.), AND/OR ANY OTHER APPLICABLE STATE ENVIRONMENTAL LAW AND THE REGULATIONS PROMULGATED THEREUNDER.

(b) THE OCCURRENCE OF THE CLOSING WILL CONSTITUTE AN ACKNOWLEDGEMENT BY PURCHASER THAT THE PROPERTY WAS ACCEPTED BY PURCHASER WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND OTHERWISE ON AN "AS IS, WHERE IS, AND WITH ALL FAULTS" BASIS. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY, NOR IS PURCHASER RELYING ON, ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, WARRANTIES OR INFORMATION PERTAINING TO THE PROPERTY. PURCHASER AND ANY AND ALL SUBSIDIARIES, SUCCESSORS AND ASSIGNS OF PURCHASER (COLLECTIVELY, "PURCHASER RELATED PARTIES") HEREBY RELEASE SELLER AND SELLER RELATED PARTIES (AS HEREINAFTER DEFINED) FROM ANY AND ALL LIABILITIES AND OBLIGATIONS IN ANY WAY RELATED TO THE PROPERTY ("RELEASE"). PURCHASER AND ANY AND ALL PURCHASER RELATED PARTIES HEREBY DEFEND, INDEMNIFY AND HOLD SELLER AND SELLER'S DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, ADVISORS, REPRESENTATIVES, AFFILIATES, SUCCESSORS AND ASSIGNS (COLLECTIVELY "SELLER RELATED PARTIES") HARMLESS FROM AND AGAINST, ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO LEGAL, ACCOUNTING, CONSULTING,

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ENGINEERING, INVESTIGATION, REMEDIAL AND RESPONSE COSTS) IMPOSED ON, SUFFERED OR INCURRED BY, OR ASSERTED AGAINST SELLER OR ANY ONE (1) OR MORE OF SELLER'S OR PURCHASER RELATED PARTIES, PURCHASER, OR THE PROPERTY ARISING FROM ANY MATTER OR THING RELATED TO THE PROPERTY, INCLUDING THE ENVIRONMENTAL CONDITION AND/OR THE PHYSICAL CONDITION OF THE PROPERTY, REMEDIAL WORK, HAZARDOUS MATERIALS, OR ONGOING ACTION ACCRUING OR ARISING OUT OF ANY ONE (1) OR MORE LAWS AND/OR ENVIRONMENTAL LAWS, BUT EXCEPTING (i) ANY MATTER OR THING ARISING OUT OF SELLER'S FAILURE TO PAY ANY TAXES, GARBAGE OR USER FEES OR WATER BILLS RELATED TO THE PROPERTY OR ANY OTHER LEVIES AGAINST THE PROPERTY WHICH BECAME DUE AND PAYABLE PRIOR TO CLOSING OR (ii) ANY THIRD PARTY CLAIM AGAINST SELLER RELATING TO OR ARISING OUT OF SELLER'S USE OR OCCUPANCY OF THE PROPERTY PRIOR TO CLOSING EXCEPT WITH RESPECT TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY ("INDEMNITY"). BY WAY OF CLARIFICATION, AND NOT OF LIMITATION, THE PARTIES INTEND THAT PURCHASER AND PURCHASER RELATED PARTIES SHALL ASSUME ALL LIABILITY FOR AND SHALL INDEMNIFY SELLER AND SELLER RELATED PARTIES FOR ALL MATTERS RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY AND ANY AND ALL REQUIREMENTS UNDER ANY AND ALL ENVIRONMENTAL LAWS APPLICABLE TO THE PROPERTY, WHETHER ARISING BEFORE OR AFTER CLOSING. PURCHASER MAY NOT LOOK TO SELLER OR TO ANY OF SELLER RELATED PARTIES IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF.

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(c) THE RELEASE AND THE INDEMNITY INCLUDE CLAIMS OF WHICH PURCHASER IS PRESENTLY UNAWARE OR WHICH PURCHASER DOES NOT PRESENTLY SUSPECT TO EXIST. PURCHASER SPECIFICALLY ACKNOWLEDGES THAT PURCHASER HAS HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL REGARDING THE RELEASE AND THE INDEMNITY.

(d) PURCHASER ALSO HEREBY EXPRESSLY WAIVES ANY RIGHT THAT PURCHASER MAY HAVE UNDER ANY ONE (1) OR MORE LAWS, ENVIRONMENTAL LAWS, OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT IN CONNECTION WITH THE RELEASE AND THE INDEMNITY. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE REFLECTS THAT THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING. IT IS NOT CONTEMPLATED THAT THE PURCHASE PRICE WILL BE INCREASED IF COSTS TO PURCHASER ASSOCIATED WITH THE PROPERTY PROVE TO BE LESS THAN EXPECTED NOR WILL THE PURCHASE PRICE BE REDUCED IF PURCHASER'S PLAN FOR THE PROPERTY LEADS TO HIGHER COST PROJECTIONS.

(e) PURCHASER AND ANY AND ALL PURCHASER RELATED PARTIES HEREBY COVENANT NOT TO SUE SELLER OR SELLER RELATED PARTIES FOR ANY CLAIMS, LOSSES, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO LEGAL, ACCOUNTING, CONSULTING, ENGINEERING, INVESTIGATION, REMEDIAL AND RESPONSE COSTS) ARISING FROM ANY MATTER RELATED TO THE PROPERTY, INCLUDING THE ENVIRONMENTAL CONDITION AND/OR THE PHYSICAL CONDITION OF THE PROPERTY.



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(f) THE TERMS AND PROVISIONS OF THIS SECTION 15 SHALL SURVIVE THE CLOSING AND DELIVERY OF THE DEED.

### 16. Financial Assurance and Insurance.

(a) All obligations, rights, and liabilities set forth in this Section 16 shall survive Closing and delivery of the Deed. Purchaser covenants that Purchaser has the financial strength to complete the Remedial Work, as hereinafter defined, and develop the Property in accordance with the BCA and this Contract, including all Exhibits attached hereto. No later than the date on which Purchaser commences any Remedial Work at the Property, Purchaser covenants that Purchaser shall obtain, for purposes of the Remedial Work and project development, one or more payment and performance bond(s), including from Purchaser's contractor(s), naming lenders, investors and Seller as beneficiaries (the "P & P Bond(s)"), for an amount equal to the amount necessary to develop the Property for Purchaser's Intended Use including all Remedial Work. Purchaser hereby agrees to require that any and all P & P Bond(s) name Seller as a beneficiary of any and all P & P Bond(s) securing a contract or contracts that cover Remedial Work required to be completed to secure a COC for the Property, upon the following terms and conditions:

(i) Prior to the issuance of any and each of the P & P Bond(s), the form of the P & P Bond(s) shall be delivered to Seller for Seller's approval, which approval shall not be unreasonably withheld, conditioned, or delayed. In Seller's reasonable discretion, the P & P Bond(s) shall be acceptable to Seller with respect to the terms and content as they relate to Seller's ability to call the P & P Bond(s), amounts as they relate to the amount allocated to the Remedial Work, and the bonding company's credit rating.

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(ii) Seller's interest in P & P Bond(s), at any given time prior to the issuance of the COC, shall be equal to the amount necessary for the completion of the Remedial Work required to obtain the COC for the Property;

(iii) The P & P Bond(s) shall be in place and in effect through the date of NYSDEC's issuance of the COC. Upon NYSDEC's issuance of the COC, Seller shall have no further interest in the P & P Bond(s);

(iv) As further assurance, Purchaser shall provide to Seller a limited assignment of contractor(s) contract(s) ("Assignment"), for such contract or contracts that include any aspect of the Remedial Work necessary to obtain the COC, which Assignment shall be held in escrow by Seller's counsel, absent and until any Default under this Contract and any period provided for remedying such Default has expired without correction of the Default by Purchaser;

(v) Seller acknowledges that its interest in any P & P Bond(s) and in any assigned contracts shall be subject and subordinate to that of any lender or investor whose interests are also secured by such P & P Bond(s) and contracts; and

(vi) Purchaser shall provide copies of the P & P Bond(s) and a fully executed, original Assignment of all applicable contract(s) to Seller prior to commencement of any Remedial Work, or any other ground intrusive work, at the Property.

(b) No later than sixty (60) days prior to the anticipated issuance of the COC by NYSDEC, Purchaser shall place in escrow an amount equal to the amount necessary to complete ten (10) years of O & M Obligations at the Property ("O & M Funds"). The O & M Funds shall be equal to the value of ten (10) years of O & M Obligations costs (based on Seller's reasonable estimate of year one costs, with a three percent (3%) annual increase for inflation,

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provided that if NYSDEC's requirements for the O & M Obligations will result in costs exceeding [REDACTED] in year one, Purchaser shall have the opportunity to confer with Seller on the amount of year one costs and the parties shall work together to determine a mutually agreeable amount) (the "O & M Escrow"). Annually thereafter, on a date occurring thirty (30) days after the submittal of the annual Periodic Review Report, as defined in NYSDEC DER-10, Section 6.3(b), required by NYSDEC, Purchaser shall be entitled to withdraw from the O & M Escrow an amount equal to the allocation for such year of the escrowed amount for O & M Obligations. In the event NYSDEC discontinues the annual O & M Obligations in less than ten (10) years, the O & M Escrow shall be closed and any remaining amount in the account shall be returned to Purchaser. At the conclusion of the ten (10) year period the escrow account may be extended, modified or terminated as determined based upon requirements of NYSDEC with respect to the O & M Obligations at the Property.

(c) In the event that Purchaser does not complete the Remedial Work to NYSDEC requirements and does not obtain a COC pursuant to NYSDEC schedules, or in the event that there are any lengthy delays in the Remedial Work which are not caused by NYSDEC and such delays will prevent, in Seller's reasonable estimation, NYSDEC from timely issuing the COC, Seller shall have the right, but not the obligation to enter the Property and to draw on the P & P Bond(s) in an amount necessary, as reasonably determined by Seller, and to complete the Remedial Work at the Property in order to obtain the COC ("Seller's Entry Option"). Upon exercising Seller's Entry Option, Seller's right of entry shall last through and until the completion of all Remedial Work at the Property and NYSDEC issuance of the COC. In the event that Seller must complete the Remedial Work to obtain the COC, Seller shall be entitled to any and all Tax Credits, as hereinafter defined, or if such Tax Credits are not forthcoming,

## **CONFIDENTIAL BUSINESS RECORD**

Purchaser agrees to pay to Seller the cash equivalent thereof, accrued through the date of Seller's receipt of the COC. Notwithstanding the foregoing, Seller shall not be entitled to claim Tax Credits which Purchaser has paid Seller for pursuant to Section 2 of this Agreement.

(d) In the event that Purchaser is not fulfilling its ongoing O&M Obligations, Seller shall be entitled to draw upon the O&M Escrow and Seller shall be entitled to re-enter the Property to undertake Purchaser's O&M Obligations ("Seller's Second Entry Option"). Seller's Second Entry Option shall be conditioned as follows: In order to exercise Seller's Second Entry Option, Seller must declare Seller's intention to exercise Seller's Second Entry Option as soon as practicable upon Purchaser's failure to timely complete any of O&M Obligations ("Seller's Second Entry Notice"). Upon receipt of Seller's Second Entry Notice, Purchaser shall have thirty (30) days to declare its intent to undertake and complete the delinquent O&M Obligations and an additional ten (10) days to commence undertaking the O&M Obligations. If within thirty (30) days of Seller's delivery of Seller's Second Entry Notice, Purchaser does not deliver to Seller notice of its intent to undertake the O&M Obligations, Seller's Second Entry Option shall become immediately and indefinitely exercisable by Seller.

(e) Purchaser understands that should Purchaser breach its obligations hereunder to remediate the Property to NYSDEC requirements and obtain a COC and/or to undertake any O&M Obligations at the Property, Purchaser shall be in default of this Contract and Seller shall have available to it all remedies hereunder with respect to such a default.

(f) S A + A Development, Inc., Stuart Alexander, David Alexander, and Ernst Valery (each being a "Guarantor" and collectively being, "Guarantors") shall execute and deliver to Seller at Closing a guaranty, in substantially the same form as set forth in Exhibit

## CONFIDENTIAL BUSINESS RECORD

E attached hereto pursuant to which the Guarantors shall guarantee Purchaser's obligations hereunder ("Guaranty").

(g) Prior to the first entry onto the Property by Purchaser or Purchaser's agents, employees, contractors or consultants, Purchaser shall deliver to Seller a certificate of insurance evidencing that Purchaser has in force and effect a commercial general liability insurance policy (including contractual liability) in an amount of not less than [REDACTED] per occurrence and [REDACTED] in the aggregate and naming Seller as an additionally named insured ("Certificate of Insurance"). Purchaser shall indemnify, save harmless and defend Seller from and against, and shall compensate and reimburse Seller for, any and all claims, liabilities, loss, costs, damage and expenses (including reasonable attorneys' fees whether incurred at or before the trial level or in any appellate or bankruptcy proceedings) (collectively "Claims") which Seller may suffer, sustain or incur by reason of (i) the entry on the Property by Purchaser and/or its employees, agents, contractors and/or consultants, (ii) any one (1) or more acts or omissions of Purchaser or its employees, agents, contractors or consultants or (iii) the exercise of Purchaser's rights and obligations under this Contract, including any damage to the Property or to any person or other real or personal property, and including the filing of any mechanics' or other statutory or common law lien or claim against the Property or any part thereof. The aforementioned obligation of Purchaser to indemnify, defend and hold harmless Seller shall survive the Closing or earlier termination of this Contract.

17. **Design and Development.** Seller and Purchaser acknowledge and agree that Purchaser is purchasing the Property with the intent to develop one (1) or more buildings and improvements to be used as mixed use commercial/restricted residential ("Purchaser's Intended Use") (collectively, "Improvements") on the Property at Purchaser's sole cost and

## CONFIDENTIAL BUSINESS RECORD

expense. Purchaser shall notify Seller in writing if Purchaser's Intended Use or the Improvements are modified, providing reasonable detail to Seller so as to allow Seller to evaluate the modification. Seller shall not have the ability to object to such modification unless such modification is inconsistent with the BCA or any NYSDEC directive or with the Deed Restrictions (as hereinafter defined), in which case, Seller may object in Seller's sole and absolute discretion. The parties hereby agree that no modification which is inconsistent with the BCA or any NYSDEC directive is or will be permitted. Purchaser hereby agrees that Purchaser's development of the Property will be consistent with the restrictions set forth in the Deed attached hereto as Exhibit B ("Deed Restrictions"), the NYSDEC directives under the BCP, the BCA, and the Purchaser's Intended Use of the property.

Purchaser, at Purchaser's sole cost and expense, shall, promptly and in a good workmanlike manner, upon completion of Purchaser's remediation of the Property as hereinafter described in Section 18 and NYSDEC issuance of the COC, commence, perform, and construct the Improvements consistent with the Deed Restrictions, the BCA and Approved AAR (as hereinafter defined) and all applicable Laws. Any alterations to the Purchaser's Intended Use shall be consistent with the Approved AAR and are subject to Seller's written approval, which approval Seller shall not unreasonably withhold, condition or delay. Purchaser shall be required, at Purchaser's cost and expense, to obtain all permits and approvals, including but not limited to the Site Plan Approval (hereinafter defined), for the Improvements. Purchaser shall promptly provide Seller with a complete set of any design plans, once available, permits and approvals, the scope of work and construction time schedule (the design plans, the scope of work, the permits and approvals, and the construction time schedule may be collectively referred to as the "Construction Submission Materials"). To the extent that Seller determines that the Construction

## **CONFIDENTIAL BUSINESS RECORD**

Submission Materials are inconsistent with the BCA or any NYSDEC directive or with the Deed Restrictions, the Construction Submission Materials shall be subject to Seller's review, comment, and approval in Seller's reasonable discretion. Purchaser shall be responsible for obtaining any and all permits and approvals required by local, state, or federal law, including but not limited to site plan approval, subdivision approval, and zoning approval for Purchaser's Intended Use of the Property (collectively "Site Plan Approval"); provided that Purchaser shall provide Seller with copies of all applications prior to submission to any governmental authority. Notwithstanding any provision contained in this Section 17, if Seller objects to any Construction Submission Materials submitted to Seller by Purchaser, Seller must deliver written notice of such objection to Purchaser within five (5) business days of Seller's receipt of the Construction Submission Materials. Seller's failure to object in writing within such five (5) business days, shall be deemed Seller's approval of the Construction Submission Materials. This Section 17 shall survive Closing and delivery of the Deed.

18. **Environmental Matters.**

(a) The parties acknowledge that environmental conditions exist at the Property, which environmental conditions will require remedial investigation, remedial action, and future ongoing operations and maintenance. Seller has been accepted into the BCP as a Participant, as defined by NYECL, Title 14, §27-1405(1)(a). Purchaser intends to seek entry into the BCP as a Volunteer, as defined by NYECL, Title 14, §27-1405(1)(b).

(b) Purchaser and Seller acknowledge that (i) Seller has submitted a Remedial Investigation Work Plan ("RIWP") and an Alternatives Analysis Report, as defined by NYCRR 375-3.2 ("AAR") to the NYSDEC, (ii) that the AAR was drafted with the input of both Purchaser and Seller and (iii) that the AAR was reviewed and approved by Purchaser prior to

## CONFIDENTIAL BUSINESS RECORD

Seller's submission of the AAR to NYSDEC. The mutually agreed upon AAR submitted to NYSDEC shall be referred to herein as the "Draft AAR".

(c) Purchaser acknowledges that Seller has utilized and is currently utilizing the environmental consulting services of Environmental Resources Management ("ERM" or "Seller's Consultant") with respect to the development of its application to the NYSDEC to enter into the BCP, submission of the RIWP, Seller's implementation of the RIWP, and Seller's drafting of the Draft AAR.

(d) In the event NYSDEC approves the Draft AAR, the Draft AAR shall be deemed the "Approved AAR". In the event that NYSDEC disapproves of the Draft AAR or should the Draft AAR be rejected as a result of Citizen Participation, as defined and described in NYCRR 375, 1-22, Seller agrees to give Purchaser prompt written notice of such rejection, and Seller and Purchaser shall renegotiate the AAR within thirty days of Seller's notice to Purchaser of such disapproval ("Renegotiation Period"). Purchaser and Seller agree to renegotiate AAR in good faith. If during the Renegotiation Period it is determined that the resolution of the NYSDEC or Citizen Participation issues with the AAR will subject either party to increased costs, expenses, or liabilities, such party ("Burdened Party") shall have the option to terminate the Contract unless the other party (i) agrees in writing to pay for/assume any such increased costs, expenses, or liabilities, and (ii) delivers to the Burdened Party financial assurance of its ability to pay the increased amount. Should either party exercise such termination right, this Contract shall be deemed terminated, null and void in all respects, (except for any indemnity and/or repair obligations arising out of Purchaser's access to the Property) and Seller shall promptly return the Initial Deposit, together with the Refundable Deposit, to Purchaser.



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(e) Purchaser shall, within five (5) business days of the Effective Date, submit a bona fide application to amend the BCA to include Purchaser as a Volunteer (the "Application"). Should Purchaser not submit the Application within such five (5) business day Period, Purchaser shall be in default of this Contract. The Parties agree to cooperate in all respects to allow Purchaser to successfully be accepted into the BCP, and Seller agrees to cooperate with Purchaser's reasonable requests for submittals to facilitate Purchaser's acceptance into the BCP, provided that any such cooperation and submittals are not detrimental to Seller's interests. Upon Purchaser's acceptance into the BCP and Purchaser's receipt of the amended BCA from NYSDEC, Purchaser shall have ten (10) business days to execute the BCA ("Executed BCA") and deliver the Executed BCA to NYSDEC. Should Purchaser fail to deliver the Executed BCA to NYSDEC within such ten (10) business day period, Purchaser will be in default of this Contract. In the event that Purchaser is not accepted into the BCP as a Volunteer, this Contract shall be deemed terminated, null and void in all respects, (except for any indemnity and/or repair obligations arising out of Purchaser's access to the Property) and Seller shall promptly return the Initial Deposit, together with the Refundable Deposit, to Purchaser.

Purchaser agrees to complete, at Purchaser's sole cost and expense, all obligations set forth in the BCA and any and all other NYSDEC decision documents and directives with regard to the Property to implement the NYSDEC approved cleanup for the Property, including without limitation any post remedy ongoing operations and maintenance requirements, engineering and institutional controls, and periodic review and reporting requirements (collectively, the "Remedial Work"). Purchaser will implement the Remedial Work in accordance with the BCA and any and all related NYSDEC decision documents and directives. Purchaser will implement the remedy in such a way that Purchaser's implementation of the

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remedy results in NYSDEC's issuance of a Certificate of Completion as defined by NYCRR 375-1.9 naming both Purchaser and Seller ("COC").

Upon Purchaser's successful entry into the BCP and execution of the BCA, Purchaser shall perform all on-site and off-site remedial actions and related work to satisfy the requirements of the BCA and any and all other NYSDEC decision documents and directives related to the Property, and shall be responsible for all costs and expenses related thereto, including but not limited to any and all post remedy operations and maintenance requirements, engineering and institutional controls, and periodic review and reporting requirements. Purchaser acknowledges that Purchaser may not withdraw from the BCP after the Closing Date. Purchaser shall perform all of the Remedial Work to satisfy the requirements of the BCA, and shall be responsible for all costs and expenses related to the Remedial Work. Purchaser shall also be solely responsible for any costs and expenses related to any threatened or actual NYSDEC reopener or additional work to maintain the effectiveness of the COC after the NYSDEC's issuance of the COC. Should Purchaser withdraw from the BCP at any time after Purchaser is accepted into the BCP as a Volunteer, Seller shall be entitled to either (i) a draw on the P & P Bond(s), hereinafter defined, to complete the Remedial Work pursuant to the terms of Sections 16; (ii) specific performance with regard to Purchaser's obligations to remediate the Property in accordance with this Section 18, the Approved AAR, and the BCA; or (iii) bring an action against the Guarantors to collect on the Guaranty.

Purchaser and Purchaser Related Parties agree and covenant not to assert any claim against Seller or any Seller Related Parties for any costs and expenses related to the Remedial Work at the Property or any other costs and expenses incurred in Purchaser's fulfillment of the obligations set forth in the BCA. Purchaser shall and will indemnify, defend

## CONFIDENTIAL BUSINESS RECORD

and hold Seller and any Seller Related Parties harmless from and against any and all claims relating to the same.

(f) Purchaser agrees that its remediation obligations under the BCA and BCP shall include both contamination on the Property (“On-Site Contamination”), and responsibility and liability related to any environmental condition, which has migrated, released or emanated from the Property (“Off-Site Contamination”). After the Closing Date, Purchaser agrees to provide Seller and Seller’s agents and contractors, including but not limited to Seller’s Consultant, temporary access to the Property where such access will facilitate Seller’s inspection of Purchaser’s implementation of the BCA and/or Purchaser’s Intended Use. Purchaser agrees that Seller shall have no responsibility for any costs, expenses, liabilities or other obligations associated with either On-Site or Off-Site Contamination, the Remedial Work or the O&M Obligations at the Property.

All of Purchaser’s actions and submissions under the BCP shall be in accordance with the BCA. Except for any NYSDEC delays, Purchaser shall diligently complete all of its obligations under the BCA to allow for NYSDEC to issue a COC. Purchaser agrees that should Purchaser default on its obligations under the BCA and/or this Contract, Purchaser shall have fifteen days to cure such default (“BCA Cure Period”), and is solely responsible for any penalties, increased costs or other liabilities arising out of any such default or delay. In the event that Purchaser does not cure such default within the BCA Cure Period, Seller may seek to amend the BCA to remove Purchaser as an Applicant as defined in NYCRR 375-3.2(b) and Purchaser hereby consents to and will not object to such removal. Any time after NYSDEC’s issuance of the COC, Seller has the option, but not the obligation, to withdraw from the BCA and BCP and Purchaser shall cooperate in all respects with regard to such Seller withdrawal. Notwithstanding

## CONFIDENTIAL BUSINESS RECORD

the foregoing rights of Seller, Seller and Purchaser agree that the COC shall name both Seller and Purchaser.

(g) Seller and Purchaser acknowledge that each party may have completed certain work at the Property that qualifies for Brownfield tax credits as set forth in Section 21 of the New York State Tax Law ("Tax Credits") (collectively, "Qualifying Work"). Subject to the terms herein, Purchaser and Seller acknowledge that should Purchaser complete the Remedial Work and receive the COC in accordance with the terms of this Contract and the BCA, and have paid to Seller Seller's Prepaid Tax Credit in accordance with Section 2 of this Contract, Seller shall not submit any claim for Seller's Tax Credits to the NYSDTF, all Seller's rights to any Tax Credits under Section 21 of the New York State Tax Law having been fulfilled by Purchaser's payment to Seller pursuant to Section 2 herein. In the event Purchaser does not pay Seller Seller's Prepaid Tax Credit pursuant to Section 2 herein, Seller shall retain Seller's right to apply for any Tax Credits due to Seller under applicable law and this Contract and in such event, Seller and Purchaser shall each be entitled to any Tax Credits applicable to each party's respective Qualifying Work which accrued prior to the later of (i) date of NYSDEC's approval of the Draft AAR or (ii) the date of Purchaser's delivery of the Executed BCA to NYSDEC ("Tax Transfer Date"). Should Seller complete any Remedial Work and obtain the COC as a result of a Purchaser default under this Agreement, Seller shall be entitled to any and all Tax Credits, or if such Tax Credits are not forthcoming, Purchaser agrees to pay Seller the cash equivalent thereof, accrued with respect to the Property regardless of the Qualifying Work and the Tax Transfer Date, except as provided for in Section 16(c). Any Tax Credits accrued by virtue of Seller's Qualifying Work shall collectively be referred to as "Seller's Tax Credits". Seller acknowledges that should Purchaser complete the Remedial Work, receive the COC,

## CONFIDENTIAL BUSINESS RECORD

develop the Property in accordance with the terms of this Contract and pay to Seller Seller's Prepaid Tax Credit in accordance with Section 2 herein, Purchaser shall be entitled to any and all Tax Credits available for the Property.

(h) This Section 18 shall survive Closing and delivery of the Deed.

19. **Access.** Subject to the terms and conditions herein, including but not limited to Purchaser's insurance and indemnity obligations, upon Purchaser's acceptance into the BCP, Purchaser shall have access to the Property to complete any and all of Purchaser's obligations under the BCA and the Approved AAR, provided, however, that Purchaser shall be obligated to repair any damage to the Property caused by any and all of Purchaser's activities at the Property. For purposes of clarity, Purchaser's remediation of the Property shall not constitute "damage" under this Section 19.

20. **Notice.** All notices, requests, demands, and other communications pertaining to this Contract shall be in writing and shall be deemed duly given and effective (a) on the day when sent by e-mail, (b) on the day when delivered personally (which shall include delivery by Federal Express or other nationally recognized, reputable overnight courier service that issues a receipt or other confirmation of delivery) addressed as follows or (c) three (3) business days after the date mailed by certified or registered U.S. mail, return receipt requested, postage prepaid, addressed as follows:

SELLER: HOWDEN NORTH AMERICA INC.  
c/o Colfax Corporation  
420 National Business Parkway, 5th Floor  
Annapolis Junction, Maryland 20701  
Attention: Mark Paul Lehman, Vice President of Howden  
North America Inc.  
E-mail: markpaul.lehman@colfaxcorp.com

With a Copy to: PHILLIPS LYTTLE LLP  
One Canalside

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125 Main Street  
Buffalo, New York 14203  
Attention: Morgan G. Graham  
E-mail: mgraham@phillipslytle.com

PURCHASER: SAAKC BUFFALO FORGE, LLC  
150 SE 2nd Avenue, Suite 300  
Miami, Florida 33131  
Attention: David Alexander  
E-mail: dalexander@saadev.com

With a Copy to: KAVINOKY COOK LLP  
726 Exchange Street  
Buffalo, New York 14210  
Attention: Deborah J. Chadsey  
E-mail: dchadsey@kavinokycook.com

Notices shall be deemed effective if given by the parties' counsel.

21. **Applicable Law.** This Contract shall be governed by the internal laws of the State of New York without regard to the principles of conflicts of laws.

22. **Assignment.** Purchaser may not assign this Contract without Seller's prior written consent.

23. **Modifications.** This Contract may not be changed or ended orally. Any modification to this Contract must be in writing, and must be signed by the parties hereto in order to be effective.

24. **Termination.** Should this Contract be terminated by either party pursuant to the terms and conditions hereof, the Initial Deposit along with the Refundable Deposit shall be refunded to Purchaser and neither party shall have any further liability or obligation hereunder except for obligations and liabilities hereunder which expressly survive termination except where specified otherwise in this Contract.

## CONFIDENTIAL BUSINESS RECORD

25. **Confidentiality**. No party hereto shall provide any information respecting this Contract to any third party, except to the parties' professional consultants and representatives (such as the parties' attorneys, accountants, insurers, lenders, title insurers, surveyors and brokers). The parties shall keep the terms of this Contract confidential except with respect to (a) information already within the public domain and (b) information that must be disclosed pursuant to governmental law, order or regulation. Seller and Purchaser shall not make any public announcement about the existence or terms of this Contract until after the Closing Date.

26. **Binding Contract**. This Contract is binding upon and shall inure to the benefit of the parties hereto, and their respective affiliates, successors and assigns.

27. **Enforceability**. If any provision in this Contract is excessively broad, it shall be construed to be enforceable to the extent compatible with applicable law. If any one or more provisions herein shall be found by a court to be unenforceable, the balance of the Contract shall remain enforceable. Captions and headings in this Contract are for convenience only. They shall not limit or circumscribe the scope of any provision herein.

28. **Recording**. If Purchaser so requests, a memorandum of this Contract shall be recorded in the Erie County Clerk's Office.

29. **Entire Agreement**. This Contract expresses the parties' complete agreement relating to the subject matter herein contained.

30. **Counterparts**. This Contract may be signed in counterparts, and by facsimile and/or e-mail signatures, which original, facsimile and/or e-mail counterparts shall be deemed originals for all purposes, and which together shall be deemed one agreement.

## **CONFIDENTIAL BUSINESS RECORD**

31. **Full Execution.** This Contract shall be deemed to be fully executed on the last date upon which the parties hereto have signed a counterpart hereof (“Full Execution”). The date of Full Execution shall also be deemed the “Effective Date”.

32. **Interpretation.** This Contract has been thoroughly reviewed by Purchaser and shall not be construed against Seller despite the fact that Seller prepared it.



**CONFIDENTIAL BUSINESS RECORD**

IN WITNESS WHEREOF, this Contract of Sale has been fully executed by the parties hereto as of the day and year first above mentioned.

HOWDEN NORTH AMERICA INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Date \_\_\_\_\_  
Title: \_\_\_\_\_

SAAKC BUFFALO FORGE, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Date \_\_\_\_\_  
Title: \_\_\_\_\_

*(Guarantor signatures to follow on next page)*

**CONFIDENTIAL BUSINESS RECORD**

CORPORATE GUARANTOR:

S A + A DEVELOPMENT, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Date \_\_\_\_\_  
Title: \_\_\_\_\_

PERSONAL GUARANTORS:

\_\_\_\_\_  
Name: Stuart Alexander Date \_\_\_\_\_

\_\_\_\_\_  
Name: David Alexander Date \_\_\_\_\_

\_\_\_\_\_  
Name: Ernst Valery Date \_\_\_\_\_

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**CONFIDENTIAL BUSINESS RECORD**

**EXHIBIT A**

**Intentionally Omitted**

**CONFIDENTIAL BUSINESS RECORD**

**EXHIBIT B**

***BARGAIN & SALE DEED***

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**THIS INDENTURE**, made the \_\_\_\_ day of \_\_\_\_\_, 2017,

**HOWDEN NORTH AMERICA INC.**, a Delaware Corporation, having its office at \_\_\_\_\_ (“**Grantor**”), and

**SAAKC BUFFALO FORGE, LLC** \_\_\_\_\_ (“**Grantee**”).

**WITNESSETH**, that the Grantor, in consideration of ONE AND MORE DOLLARS (██████████), lawful money of the United States, paid by the Grantee, does hereby grant and release unto the Grantee, and the successors and assigns of the Grantee forever,

**ALL THAT TRACT OR PARCEL OF LAND** situate in the City of Buffalo, County of Erie and State of New York, bounded and described in Schedule A attached hereto.

**TOGETHER** with the appurtenances and all the estate and rights of the Grantor in and to the Premises, and

**TOGETHER** with the ownership and rights, if any, of the Grantor to land lying in the bed or any street or highway, adjoining said Premises to the center line thereof; and

**SUBJECT** to easements, agreements, rights of way and restrictions of record, if any.

**TO HAVE** and to hold the Premises herein granted unto the Grantee, the heirs and assigns of the Grantee forever.

**THE** Grantor, in compliance with Section 13 of the Lien Law, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

**THE** Grantor further covenants that this conveyance is not all or substantially all of the assets of the Grantor.

**GRANTOR** conveys the Premises subject to the covenants, conditions, and restrictions as follows:

1. The Premises will be used for commercial mixed use or restricted residential use, as commercial and restricted residential use are defined in 6 NYCRR 375-1.8(g), and for no other use or purpose.

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2. The Premises owner shall adhere to any and all requirements, obligations, restrictions, and covenants set forth in the New York State Department of Environmental Conservation approved Site Management Plan and Soil Management Plan and the recorded Environmental Easement for the Premises.

3. There will be no use of the groundwater at the Premises unless permitted by the New York State Department of Environmental Conservation.

**AND** if the restrictions set forth herein are violated, Grantor may (a) exercise any and all legal and equitable remedies, including but not limited to injunctive relief. If Grantor successfully brings an action or proceeding to extinguish a violation or otherwise enforce the provisions of these covenants, restrictions and remedies of Grantor, the costs of such action or proceeding, including attorneys' fees and disbursements, shall become a binding personal obligation of Grantee. These covenants and restrictions shall run with the land, and shall bind Grantee and Grantee's heirs, executors, administrators, legal representatives, successors and assigns, and shall inure to the benefit of Grantor and Grantor's successors and assigns.

**AND** the Grantee, by acceptance of this deed, accepts and ratifies the covenants, conditions and restriction hereinabove referenced.

**IN WITNESS WHEREOF**, the Grantor and Grantee has caused this deed to be executed by their duly authorized officers on the day and year first above written.

**GRANTOR:**

**HOWDEN NORTH AMERICA INC.**

By: \_\_\_\_\_  
Name:  
Title:

**GRANTEE:**

**SAAKC BUFFALO FORGE, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**CONFIDENTIAL BUSINESS RECORD**

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2017, before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2017, before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**CONFIDENTIAL BUSINESS RECORD**

**Schedule A**

Legal Description of Property

**CONFIDENTIAL BUSINESS RECORD**

**EXHIBIT C**

**Intentionally Omitted**



**CONFIDENTIAL BUSINESS RECORD**  
**EXHIBIT D**

**Intentionally Omitted**

# CONFIDENTIAL BUSINESS RECORD

## EXHIBIT E

### GUARANTY

THIS GUARANTY, is made as of \_\_\_\_\_, 2017, by S A + A DEVELOPMENT, INC., STUART ALEXANDER, DAVID ALEXANDER, and ERNST VALERY (each a "Guarantor" and collectively, "Guarantors") to HOWDEN NORTH AMERICA INC. ("Howden").

Howden is the seller under that certain contract of sale dated as of \_\_\_\_\_, 2017 ("Contract") involving the purchase and sale of and New York State Department of Environmental Conservation ("NYSDEC") Brownfield Cleanup Program (collectively, "BCP") remediation and redevelopment of unimproved vacant real property consisting of parcels known as 516 Spring Street, 498 Spring Street, 490 Broadway Street, 498 Broadway Street, 233 Mortimer Street, 213 Mortimer Street, 187 Mortimer Street, Buffalo, New York, more particularly identified in the real property tax records as S.B.L. Nos. 111.41-7-12.1, 111.41-7-17.1, 111.41-6-1.1, 111.41-5-31.1, 111.41-8-26, 111.41-4-1.1, 111.41-5-1.1 ("Property").

1. Guaranty.

(a) Guarantors hereby unconditionally guarantee the full and prompt payment and performance of all of the Obligations (as hereinafter defined) of SAAKC BUFFALO FORGE, LLC.

(b) "Obligations" means any and all obligations to complete the Remedial Work and O&M Obligations, each as defined in the Contract, at the Property and receive a Certificate of Completion, as defined in the Contract.

(c) Guarantors acknowledge that valuable consideration supports this Guaranty.

2. Attorneys' Fees. Should Howden employ an attorney or attorneys to enforce any of the provisions hereof, or to protect their interests in any manner arising under this Guaranty, or to recover damages for the breach hereof, and prevail, the Guarantor shall pay to Howden all reasonable costs, damages and expenses, including attorneys' fees, disbursements and court costs expended or incurred in connection herewith.

3. Nature of Guaranty: Continuing, Absolute and Unconditional. This Guaranty is and is intended to be a continuing guaranty of the Obligations, and is absolute and unconditional. No modification or amendment of any provision of this Guaranty, and no waiver of any right by Howden, shall be effective unless in writing and signed by Howden.

4. Certain Rights and Obligations. If any default shall be made in the payment or performance of any Obligations, Guarantors hereby agree to pay and perform the same without requiring Howden to resort first to SAAKC BUFFALO FORGE, LLC, (this being a guaranty of payment and performance, and not of collection).

5. Termination. This Guaranty shall remain in full force and effect following Closing (as defined in the Contract), but subject to all limitations on survival of representations, warranties and covenants set forth in the Contract. Payment or performance of Obligations from time to time shall not operate as a discontinuance of this Guaranty.

**CONFIDENTIAL BUSINESS RECORD**

6. Miscellaneous.

(a) Howden and the Guarantors shall include the respective successors and assigns of those parties, but not successors-in-title to the Property.

(b) Captions and headings in this Guaranty are solely for convenience, and are not an aid in the interpretation of this Guaranty.

(c) If any provision of this Guaranty is unenforceable in whole or in part for any reason, it shall be deemed modified to the extent necessary to make it or the applicable provision enforceable, or if for any reason such provision is not deemed modified, the remaining provisions shall continue to be effective.

(d) This Guaranty may be signed in counterparts, and by facsimile and e-mail signatures, which original, e-mail and facsimile counterparts shall be deemed originals for all purposes, and which together shall be deemed one agreement.

(e) Nothing contained herein is intended to modify or amend any part or provision of the Contract.

IN WITNESS WHEREOF, the Guarantors have signed this Guaranty as of the day and year first above written.

S A + A DEVELOPMENT, INC.

By: \_\_\_\_\_

Name:

Title:

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Name: Stuart Alexander

Address: \_\_\_\_\_

\_\_\_\_\_

**CONFIDENTIAL BUSINESS RECORD**

Name: David Alexander

Address: \_\_\_\_\_  
 \_\_\_\_\_

Name: Ernst Valery

Address: \_\_\_\_\_  
 \_\_\_\_\_

STATE OF )  
 ) SS.:  
 COUNTY OF )

On the       day of       in the year 2017, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
 Notary Public

STATE OF )  
 ) SS.:  
 COUNTY OF )

On the       day of       in the year 2017, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
 Notary Public

**CONFIDENTIAL BUSINESS RECORD**

STATE OF )  
 ) SS.:  
COUNTY OF )

On the      day of                  in the year 2017, before me, the undersigned, personally appeared                                  , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

STATE OF )  
 ) SS.:  
COUNTY OF )

On the      day of                  in the year 2017, before me, the undersigned, personally appeared                                  , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

### **Statement of Requestor's Status**

The Requestor, SAAKC Buffalo Forge, LLC qualifies as a "volunteer" under the Brownfield Cleanup Program. It does not now, and never has, owned or operated the Site. The Requestor has an agreement to purchase the Site from the responsible party and current BCP Participant, Howden North American, Inc. and requests entry into the BCP as a co-applicant with Howden North America, Inc. SAAKC Buffalo Forge, LLC will perform all work required under the BCP and will prevent future releases and limit human, environmental, or natural resource exposure to any previously released hazardous waste, while completing on-site remedial activities.